

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5429 of 1999

in

CRIMINAL APPEAL NO. 501 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH GULABSINGH KUSHAVAHA

Versus

STATE OF GUJARAT

Appearance:

THROUGH JAIL for Petitioner

MS BR GAJJAR, ADDL.PUBLIC PROSECUTOR for Respondent

CORAM : MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.R.TRIPATHI

Date of Order: 23/09/1999

ORAL JUDGMENT (per M.R.Callla, J.)

Rule. Ms.B.R.Gajjar, ld.Addl. PP waives the
service of Rule.

The petitioner, Suresh Gulabsingh Kushavaha, prisoner, D/5149 who is presently lodged in the Central Prison, Ahmedabad was tried for offence under Sec.20 of the NDPS Act and under Sec.66(B) of the Bombay Prohibition Act. The City Sessions Judge, Ahmedabad, by his order dated 26th March 1993 in Sessions Case No.180 of 1992 sentenced the present petitioner to rigorous imprisonment for 10 years and fine of Rs.1,00,000/- in default to undergo three years' imprisonment. Against this order of conviction and sentence dated 26th March 1993, the petitioner preferred appeal being Criminal Appeal No.501 of 1993. This Criminal Appeal No.501 of 1993 was dismissed by a Division Bench of this Court on 29th September 1993. Against this order dated 29th September 1993 passed by the Division Bench, the petitioner approached the Supreme Court and the Supreme Court in Criminal Appeal No.422 of 1998 (arising out of SLP (Cri.) No.399 of 1998, while granting leave, set aside the Division Bench order dated 29th September 1993 and remitted the matter back to this Court as admitted with a request that the appeal be heard on merits.

Now, during the pendency of this Criminal Appeal of 1993, the petitioner's daughter sent an application to the Supreme Court for her father's release on parole for a period of two months. Thereupon a letter dated 7th July 1999 has been received from the Assistant Registrar of the Supreme Court addressed to the Registrar of this Court whereby he has returned the application for parole along with the copy of the Supreme Court's order dated 13th April 1998 whereby the petitioner's appeal had been remitted back to this Court so as to treat the appeal as admitted and to be heard on merits. The convict himself has also sent an application dated 27th July 1999 praying for interim bail and a reference has been made to the letter dated 7th July 1999 of the Assistant Registrar of the Supreme Court.

We have considered the application moved by the petitioner's daughter for release of the petitioner on parole for a period of two months as also the convict's own application dated 27th July 1999 for interim bail. In view of the decision of the Supreme Court in the case of Maktool Singh v. State of Punjab, reported in AIR 1999 SC 1131, it is not possible either to release the petitioner convict on interim bail or to direct his release on parole for a period of two months. However, we direct that his appeal of year 1993 against the conviction may be heard in priority and accordingly we direct that the main Criminal Appeal No. 501 of 1993

itself may be listed before the Court for final hearing on any date in the month of October 1999 subject to the convenience of the Bench hearing the Criminal Appeals of the years subsequent to 1991.

Besides this, the petitioner's daughter has also mentioned in her application which was addressed to the Supreme Court that whatever wages are earned by her father in jail, 50% of that amount is deposited in the Post Office by the Jail officers and 50% is used against expenses of her father and in this regard, a prayer has been made that the amount which has been deposited in the Post Office may be remitted to the family of the petitioner. In the facts and circumstances of this case, we also direct that the concerned Jail authorities may consider the aforesaid request made by the petitioner's daughter in accordance with the Rules contained in the Jail Manual and if it is permissible according to the Rules and practice prevailing in the Jail, the said amount deposited in the Post Office may be released and be given to any member of the petitioner's family who may be named by the petitioner himself. On the question of sending 50% of the amount deposited in the Post Office, the Jail authorities will take immediate steps at the earliest, but in no case, later than 4th October 1999.

We also direct that in case the petitioner is not represented in the Criminal Appeal, the Registry may take immediate steps to nominate any of the suitable Lawyers out of the panel to represent the petitioner in the said Criminal Appeal and he may be provided with the necessary paper book etc. so as to argue the Appeal as and when it comes up before the Court. The Registry shall also take steps to inform the petitioner and his daughter about this order.

The application is allowed in terms as aforesaid and the Rule is made absolute to that extent only.

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